REMARKS

The present application was filed on March 31, 2004 with claims 1 through 28. Claims 1 through 28 are presently pending in the above-identified patent application. Claims 1, 17, and 28 are proposed to be amended herein.

5   In the Office Action, the Examiner objected to claim 28 due to indicated informalities, rejected claims 1-16 under 35 U.S.C. §101 as not falling within one of the four statutory categories of invention, rejected claims 1-8, 15-24, 27 and 28 under 35 U.S.C. §103(a) as being unpatentable over Carino, Jr. (United States Patent No. 5,754,841) in view of Arbabi et al. (United States Patent No. 5,461,699), rejected claims 9, 10, 11 and 25 under 35 U.S.C.

10   §103(a) as being unpatentable over Carino, Jr. in view of Arbabi et al., and further in view of Walpole et al. (United States Patent No. 2003/0233464) and rejected claims 12 and 26 under 35 U.S.C. §103(a) as being unpatentable over Carino, Jr. in view of Arbabi et al., and further in view of Aggarwal et al. (United States Patent Publication No. 2003/0081624). The Examiner indicated that claims 13 and 14 would be allowable if rewritten in independent form including all

15   of the limitations of the base claims and any intervening claims.

Formal Objections

Claim 28 was objected due to an indicated informality.

Applicants note that claim 28 has been amended in accordance with the Examiner's suggestion.

20   Section 101 Rejections

Claims 1-16 are rejected under 35 U.S.C. §101 as not falling within one of the four statutory categories of invention. In particular, the Examiner asserts that, while the instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed

25   method steps, and therefore do not qualify as a statutory process.

Applicants note that claim 1 has been amended to require a processor configured to perform the cited steps and is therefore positively tie to another statutory category. Applicants respectfully request that the section 101 rejection be withdrawn.

Independent Claims 1, 17 and 28

Independent claims 1, 17, and 28 were rejected under 35 U.S.C. §103(a) as being anticipated by Carino, Jr. in view of Arbabi et al. In particular, the Examiner asserts that Carino discloses selecting, based on one or more QoS criteria corresponding to a client, one or more given data items suitable for sending to the client in response to a query from the client, the one or more given data items selected from a set of data items (abstract; col. 4, lines 9-27; and col. 6, lines 60-67); and determining one or more statistics associated with the one or more given data items (FIG. 3A; col. 8, lines 14-18). The Examiner acknowledges that Carino does not disclose wherein the one or more statistics are useable to modify which data items are included in the set of data items, but asserts that Arbabi discloses this limitation at col. 8, lines 35-60.

Applicants note that, in the text cited by the Examiner, Arbabi teaches:

> A neural network accepts input data via its input layer. In the case of the present invention this input takes the form of historical data and a statistical forecast. Historical data may be grouped by factor or variable. For instance, in a sales office planning application the historical data may contain the previous sales volume for the last 6 years. Thus, the factor or variable of previous sales volume would contain 6 individual values or items for each of the years in the historical data store. A example of historical data for the sales forecasting system is shown in TABLE II. Other factors may be the number of sales persons employed or telephone calls received or information requests received or serviced. A neural network of the present invention may use zero, one, or all of the data items associated with a particular factor.
>   The selection of which factors and which data items to input to the neural network is a _decision for the system designer_. The particular data items selected can be changed at a later time if less than desirable results are obtained. _The system designer can use information obtained from the statistical model, analysis of the historical data and experience obtained during training of the neural network to select an appropriate set of factors and associated data items._ The system designer may have to experiment with factors and data items to select the most appropriate set.
>   (Col. 8, lines 35-60; emphasis added.)

First, Applicants note that Arbabi teaches that _"which data items to input to the neural network is a decision for the system designer."_ Moreover, Arbabi teaches that _"the system designer can use information obtained from the statistical model, analysis of the historical data and experience obtained during training of the neural network to select an appropriate set of factors and associated data items."_ Contrary to the Examiner's assertion, Arbabi does _not_ disclose wherein the one or more _statistics are useable to modify which data_

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items are included in the set of data items. (Applicants note that *information obtained from a statistical model* is distinguished from *statistics,* i.e., the term "information" does not necessarily include "statistics," as would be apparent to a person of ordinary skill in the art.)

Furthermore, Applicants note that the independent claims have been amended to require *wherein each QoS criteria is based on two or more of a capability of said client, a policy associated with said client, and a client request.* Support for this amendment can be found on page 2, lines 16-17; page 7, lines 10-26; page 8, line 29, to page 9, line 14; and page 11, lines 3-14. Neither Carino nor Arbabi, alone or in combination, disclose or suggest a *QoS criteria that is based on two or more of a capability of a client, a policy associated with the client, and a client request.*

Thus, Carino and Arbabi, alone or in combination, do not disclose or suggest selecting, based on one or more QoS criteria corresponding to a client in response to a query, one or more given types of data items suitable for sending to the client, wherein each QoS criteria is based on two or more of a capability of said client, a policy associated with said client, and a client request; and determining one or more statistics associated with the one or more given data items; wherein the one or more statistics are useable to modify which data items are included in the set of data items, as required by independent claims 1, 17, and 28, as amended.

Additional Cited References

Walpole was also cited by the Examiner for its disclosure of the transcoding of data based on specific QoS criteria. Walpole, however, does not address the subject of selecting data items based on QoS criteria.

Thus, Walpole does not disclose or suggest selecting, based on one or more QoS criteria corresponding to a client in response to a query, one or more given types of data items suitable for sending to the client, wherein each QoS criteria is based on two or more of a capability of said client, a policy associated with said client, and a client request; and determining one or more statistics associated with the one or more given data items; wherein the one or more statistics are useable to modify which data items are included in the set of data items, as required by independent claims 1, 17, and 28, as amended.

Aggarwal was also cited by the Examiner for its disclosure of QoS criteria levels or predefined QoS levels based on subscriber requirements. Aggarwal, however, does *not*

address the subject of selecting data items based on QoS criteria.

      Thus, Aggarwal does not disclose or suggest selecting, based on one or more QoS criteria corresponding to a client in response to a query, one or more given types of data items suitable for sending to the client, wherein each QoS criteria is based on two or more of a capability of said client, a policy associated with said client, and a client request; and determining one or more statistics associated with the one or more given data items; wherein the one or more statistics are useable to modify which data items are included in the set of data items, as required by independent claims 1, 17, and 28, as amended.

<u>Dependent Claims 2-16 and 18-27</u>

      Dependent claims 2-8, 15-16, 18-24, and 27 were rejected under 35 U.S.C. §103(a) as being anticipated by Carino, Jr. in view of Arbabi et al., claims 9, 10, 11 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carino in view of Arbabi et al., and further in view of Walpole, and claims 12 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carino in view of Arbabi et al., and further in view of Aggarwal.

      Claims 2-16 and 18-27 are dependent on independent claims 1 and 17, respectively, and are therefore patentably distinguished over Carino, Arbabi, Walpole, and Aggarwal, alone or in combination, because of their dependency from amended independent claims 1 and 17 for the reasons set forth above, as well as other elements these claims add in combination to their base claim. The Examiner has already indicated that claims 13 and 14 would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

<u>Conclusion</u>

      All of the pending claims following entry of the amendments, i.e., claims 1-28, are in condition for allowance and such favorable action is earnestly solicited.

      If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Examiner's attention to this matter is appreciated.

Respectfully submitted,

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